

1 Henry M. Lee, California Bar No. 156041
2 Robert Myong, California Bar No. 262097
3 HENRY M. LEE, LAW CORPORATION
4 3530 Wilshire Boulevard, Suite 1710
5 Los Angeles, California 90010
6 (213) 382-0955
7 (213) 382-0956 Facsimile

Attorneys for Plaintiff
Michael Chung

2011 NOV 28 PM 3:04
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

U.S. BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re)
KEITH J. KIM)
JANICE S. KIM)
Debtors)

MICHAEL CHUNG,)
Plaintiff;)
v.)
KEITH KIM, and JANICE KIM,)
Defendants.)

CASE NO.: 11-bk-49539
A.P. NO.: Ch. 7 11-434
[The Hon. Roger L. Efremsky]
**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. SECTION
523(a)(2) AND (4)**

Plaintiff Michael Chung hereby alleges the following:

VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157(a), 157(b) and 1334, and 11 U.S.C. Section 523.

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Keith J. Kim and Janice S. Kim	BANKRUPTCY CASE NO. 11-bk-49539	
DISTRICT IN WHICH CASE IS PENDING Northern	DIVISION OFFICE Oakland	NAME OF JUDGE Roger Efremsky
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

2. This is a core proceeding. This adversary proceeding is being brought in connection with defendants/debtors Keith Kim and Janice Kim's bankruptcy case under Chapter 7 of the United States Bankruptcy Code, Case Number 11-49539 now pending in the United States Bankruptcy Court for the Northern District of California, Oakland Division.

3. This is an adversary proceeding to determine the dischargeability of a debt owed by Keith Kim to Michael Chung.

PARTIES

5. Defendant Keith Kim (“Defendant”) is an individual and a debtor in this Chapter 7 Case.

6. Plaintiff Michael Chung (“Plaintiff”) is an individual and creditor of Defendant.

GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

7. Plaintiff and Defendant have known each other since high school. Said parties were classmates and established a friendship. The parties maintained their friendship over the years, and from time to time, communicated with each other as close, life-long friends. In or about 1998, Plaintiff resided in Los Angeles County and Defendant resided and conducted business in Northern California, in the San Francisco Bay area. Plaintiff was traveling to Berkeley for his own business purposes. Plaintiff and Defendant met to have a casual meeting. During this meeting, Defendant advised Plaintiff that Defendant had experienced success with his business venture known as Granny Goose and was engaged in various internet ventures, including a venture entitled "mysimon."

8. Several months later, in 1999, Defendant contacted Plaintiff and informed Plaintiff that Defendant's internet project was now entitled BRAINRUSH. Defendant explained that BRAINRUSH invested in several other companies to assist and incubate those companies for operation and profit, sale of the company, and/or public offering. Defendant inquired whether Plaintiff would be interested in investing in the project and invited Plaintiff to Northern California to visit the business offices, meet with management, and to obtain additional information. Plaintiff, based on the close, life-long friendship decided he would further review the opportunity and did travel to the business offices located in Northern California. During this visit, Defendant introduced Plaintiff to various members of management, and provided Plaintiff with an executive

1 summary for BRAINRUSH. The executive summary, Defendant, and other management
2 members confirmed that Defendant was the CEO, director, and majority shareholder of
3 BRAINRUSH.

4 9. Shortly after Plaintiff returned to Los Angeles County, Defendant called Plaintiff again
5 soliciting him to invest in BRAINRUSH. Plaintiff decided that since Defendant was a long time
6 friend, Plaintiff would invest in BRAINRUSH. Defendant thereupon sent Plaintiff a form to
7 provide information about Plaintiff's personal financial condition, which Plaintiff filled out and
8 returned.

9 10. Defendant thereafter gave Plaintiff instructions to wire his investment to Defendant's
10 company. In or about late 1999, Plaintiff agreed to invest the sum of \$1.0 million and wired \$1.0
11 million to Defendant's company. Plaintiff is informed and believes that as a result of Plaintiff's
12 investment, Plaintiff thereupon became a shareholder and investor of Defendant's company.
13 Defendant represented, and Plaintiff is informed and believes, that Defendant was an officer,
14 director, and majority shareholder of BRAINRUSH. As a shareholder and investor of
15 BRAINRUSH, Plaintiff alleges Defendant, an officer, director and majority shareholder, owed a
16 fiduciary duty of the highest degree to Plaintiff, a minority shareholder. Plaintiff alleges that
17 Defendant was required to disclose to Plaintiff, the details of all transactions affecting Plaintiff's
18 investment, including but not limited to an accounting of the receipt, distribution, and use of all
19 monies involved with the project.

20 11. In or about late 2000, Plaintiff read a news article which stated that one of the
21 BRAINRUSH companies had been sold for \$70. Plaintiff was surprised and very excited to learn
22 the news, and contacted Defendant to learn about the details of the transaction. When Plaintiff
23 contacted Defendant, he confirmed the transaction and further confirmed the proceeds of the sale
24 were in fact estimated at \$70 million.

25 12. When Plaintiff inquired as to when any profits from the sale would be distributed,
26 Defendant stated that all investors would have to wait a few months for the company to prepare
27 financial statements and records to document the transaction and revenues. Several months later,
28 and into the year 2001, Plaintiff made several requests for the status of the financial records.

1 Defendant's response was the accounting had not yet been completed and to wait. Because
2 Plaintiff and Defendant had been friends for so long, Plaintiff had no reason to believe
3 Defendant's representations were false, and waited. Plaintiff is informed and believes and based
4 on such information and belief alleges that on or about March of 2001 Defendant and other
5 corporate officers, directors and majority shareholders of BRAINRUSH conspired to defraud
6 Plaintiff by falsely creating a story that the company had lost a significant amount of money and
7 that there were no profits left to be distributed to Plaintiff.

8 13. In or about mid 2001, in response to Plaintiff's repeated inquiries as to what happened
9 to the \$70 million, Defendant stated there were no profits and that the company had suffered
10 significant losses and the funds were used to offset those losses, so there was nothing left of the
11 \$70 million to distribute to the investors. Plaintiff was surprised to learn about such losses,
12 especially since Defendant had not provided Plaintiff with any financial information relative to
13 BRAINRUSH's overall financial condition. Again, Plaintiff had no reason at this point to believe
14 the Defendant's representations were false because Defendant was Plaintiff's close, life-long
15 friend. Plaintiff thereupon again requested to review the financial records which reflected such
16 enormous losses, and the expenditure of the \$70 million. Defendant responded that the
17 company's Chief Financial Officer ("CFO") had lost the financial records; therefore, Defendant
18 could not provide Plaintiff with the requested financial accounting. Over the course of several
19 months, Plaintiff repeatedly asked for the documents; however, Defendant responded with the
20 same excuses for his continued delays, that the accounting had not been completed because the
21 CFO had lost the financial records. Defendant finally provided piecemeal documents, which
22 consisted of a few pages of bank information and a financial statement that had no supporting
23 documents.

24 14. After repeated failed attempts at obtaining the financial information, in or about late
25 2001, Plaintiff heard rumors that Defendant and another officer/director/majority shareholder had
26 personally taken significant portions, if not all, of the entire \$70 million. Plaintiff confronted the
27 other officer/director/majority shareholder about the missing money, and was advised that
28

1 Defendant had used the proceeds from the \$70 million to pay back a personal loan owed to the .
2 officer/director/majority shareholder.

3 15. Plaintiff thereupon confronted Defendant and again demanded an accounting of the
4 \$70 million. Plaintiff also advised Defendant that he intended to sue if Defendant and
5 BRAINRUSH continued to withhold the documents from him. Defendant responded that
6 Defendant was currently being investigated by the Securities Exchange Commission ("SEC") for
7 insider trading and begged Plaintiff not to sue. Defendant also represented that if Plaintiff would
8 wait a few months, Defendant would return Plaintiff's \$1.0 million investment.

9 16. After waiting several months, and not receiving return of his \$1.0 million investment,
10 Plaintiff again advised Defendant that he intended to sue Defendant to obtain the records.
11 Defendant again pleaded with Plaintiff not to sue stating that the SEC investigation had not been
12 completed, and that Defendant was using all of his financial resources to defend against the SEC
13 investigation. Defendant also repeated that it was not his fault that the financial records were not
14 available because the CFO had lost all of the records. Defendant also denied that he had
15 personally used or taken any money for his personal use, and further denied the allegations that
16 Defendant withdrew money to repay a personal loan. Defendant asked Plaintiff, as a friend, to
17 believe what he was saying and not to sue. Defendant also offered that if Plaintiff agreed not to
18 sue Defendant at that time, Defendant would give Plaintiff a promissory note, personally agreeing
19 to repay Plaintiff his entire investment in full within five years.

20 17. Because of their friendship and in reliance on Defendant's representations that he was
21 in the midst of an investigation as to other unrelated securities matters, that Defendant had not
22 used or taken any of the transaction proceeds for his personal use, Plaintiff agreed not to sue
23 Defendant at that time, accepted the written promissory note. **Exhibit A.** On or about
24 November 1, 2002, Plaintiff and Defendant executed a written promissory note, the basic terms of
25 which were that Defendant would repay Plaintiff the sum of \$1.0 million, payment of which was
26 due in five years, on December 31, 2007.

27 18. In or about early December of 2007, Plaintiff contacted Defendant and reminded him
28 that the promissory note was due and payable on December 31, 2007. Defendant responded that

1 since it had been such a long time, that Plaintiff should just forget the debt. Plaintiff informed
2 Defendant that he would not simply forget about the debt owed to Plaintiff based on Defendant's
3 earlier false representations and fraud.

4 19. On June 4, 2008, Plaintiff filed a complaint in Los Angeles Superior Court for breach
5 of contract, fraud, securities violations, and breach of fiduciary duty against Defendant and others,
6 entitled *Chung v. Kim, et al.*, Case No. BC 392047. **Exhibit B**. Default was entered against
7 Defendant on December 30, 2010. **Exhibit C**. On May 9, 2011, trial against the remaining
8 defendants was completed. On October 20, 2011, a default judgment was entered against the
9 other defaulted defendant. **Exhibit D**. Plaintiff has requested relief from the automatic stay so
10 that the default judgment can be entered against Defendant in the state court action for fraud,
11 breach of contract, breach of fiduciary duty, and securities violations.

FIRST CLAIM FOR RELIEF

**TO DETERMINE THE DISCHARGEABILITY OF DEBTS FOR PROPERTY
OBTAINED BY FALSE PRETENSES, FALSE REPRESENTATIONS, OR ACTUAL
FRAUD**

16 20. Plaintiff incorporates each and every allegation set forth in Paragraphs 1 - 19 above, as
17 though fully set forth herein.

18 21. On the date of the filing of the petition in bankruptcy, Plaintiff was and now is a
19 creditor of Defendant.

20 22. Plaintiff alleges that Defendant, made the following material representations to
21 Plaintiff:;

22 a. When Plaintiff inquired as to when any profits from the \$70 million sale would be
23 distributed, Defendant stated that all investors would have to wait a few months for
24 the company to prepare financial statements and records to document the transaction
25 and revenues.

26 b. In or about mid 2001, Defendant stated there were no profits from the \$70 million
27 transaction. Instead, Defendant represented the company had suffered significant

1 losses and the \$70 million was used to offset those losses, so there was nothing left to
2 distribute to investors.

3 d. Defendant represented to Plaintiff that the SEC was investigating Defendant and
4 that Defendant was using all of his financial resources to pay for lawyers fees in
5 response to the SEC investigation.

6 e. Defendant denied that he had personally used or taken any part of the \$70 million
7 for his personal use, and further denied the allegations that Defendant used a portion
8 of the \$70 million to repay a personal loan.

9 f. Defendant promised to repay Plaintiff's \$1.0 million investment.

10 23. The representations made by Defendant were false and Defendant knew said
11 representations were false.

12 24. Defendant had a duty of full disclosure and honesty to Plaintiff.

13 25. At the time, Plaintiff did not have reason to suspect Defendant's representations were
14 false because all information regarding the BRAINRUSH's finances were controlled, retained and
15 remained in Defendant's possession. Defendant was also Plaintiff's close, long time friend and
16 Plaintiff had no reason to believe Defendant would be lying.

17 26. Plaintiff now knows that Defendant's plan from the outset was to defraud Plaintiff of
18 his money, and further plan to defraud him to delay filing a civil lawsuit against Defendant.

19 27. Defendant unlawfully used Plaintiff's money with full knowledge of the consequence
20 that Plaintiff would suffer due to Defendant's fraud.

21 28. Defendant intended Plaintiff to rely on said representations, and in fact, Plaintiff did
22 rely upon Defendant's representations.

23 29. As a direct result of Defendant's representations, Plaintiff gave money to Defendant.

24 30. Plaintiff was harmed by the representations of Defendant. Plaintiff has been damaged
25 in the full amount they he gave to Defendant that has not been returned, plus interest, fees and
26 costs.

31. In making the representations herein alleged, Defendant acted despicably with oppression, fraud and malice, entitling Plaintiff to punitive damages in the amount according to proof at trial.

32. The damages suffered by Plaintiff are nondischargeable under Bankruptcy Code section 523(a)(2)(A).

SECOND CLAIM FOR RELIEF

**TO DETERMINE THE DISCHARGEABILITY OF DEBTS FOR PROPERTY
OBTAINED BY FRAUD OR DEFALCATION WHILE ACTING IN A FIDUCIARY**

CAPACITY

33. Plaintiff incorporates each and every allegation set forth in Paragraphs 1 - 32 above, as though fully set forth herein.

34. As a shareholder and investor of BRAINRUSH, Plaintiff alleges Defendant, an officer, director and majority shareholder, owed a fiduciary duty of the highest degree to Plaintiff, a minority shareholder. Plaintiff alleges that Defendant was required to disclose to Plaintiff, the details of all transactions affecting Plaintiff's investment, including but not limited to an accounting of the receipt, distribution, and use of all monies involved.

35. Plaintiff alleges that Defendant had a duty to disclose and failed to disclose the following material facts:

- a. That one of the BRAINRUSH assets was going to be sold for \$70 million;
 - b. The terms of the sale, the monies received from sale, provide an accounting for the sales proceeds, financial information as to the sale transaction and as to the entire company;
 - c. That Defendant and other officers, directors and majority shareholders had taken all or a portion of the sales proceeds;
 - d. That Defendant and other officers, directors and majority shareholders had taken all or a portion of Plaintiff's \$1.0 million;

e. That an officer was being investigated for securities fraud, that an officer was being sued/pursued for engaging in fraudulent transactions involving the sale of an unrelated business entity, .

4 36. In making the representations herein alleged, Defendant acted despicably with
5 oppression, fraud and malice, entitling Plaintiff to punitive damages in the amount according to
6 proof at trial.

7 37. The damages suffered by Plaintiff are nondischargeable under Bankruptcy Code
8 section 523(a)(4).

THIRD CLAIM FOR RELIEF

TO DETERMINE THE DISCHARGEABILITY OF DEBTS FOR PROPERTY

OBTAINED BY USE OF A WRITING THAT IS MATERIALLY FALSE

12 38. Plaintiff incorporates each and every allegation set forth in Paragraphs 1 - 37 above, as
13 though fully set forth herein.

14 39. On or about November 1, 2002, Plaintiff and Defendant executed a written promissory
15 note, the basic terms of which were that Defendant would repay Plaintiff the sum of \$1.0 million,
16 payment of which was due in five years, on December 31, 2007.

17 40. On December 31, 2007, Defendant failed fulfill his obligations under the promissory
18 note. Plaintiff alleges that Defendant never had any intention of repaying Plaintiff's \$1.0 million
19 investment. Instead, Plaintiff alleges that Defendant used the promissory note to delay Plaintiff's
20 filing of a lawsuit and to further defraud Plaintiff of his rights and remedies under the law.

21 41. In making the representations herein alleged, Defendant acted despicably with
22 oppression, fraud and malice, entitling Plaintiff to punitive damages in the amount according to
23 proof at trial.

24 The damages suffered by Plaintiff are nondischargeable under Bankruptcy Code section
25 523(a)(2)(B)(i).

27 WHEREFORE PLAINTIFF RESPECTFULLY REQUESTS THIS COURT:

1. Determine that Defendant's obligations, damages or debt to Plaintiff is nondischargeable pursuant to 11 U.S.C. section 523(a)(2) and (4);
 2. For damages on all claims according to proof;
 3. For interest, costs, and attorneys fees pursuant to statute or agreement;
 4. For such other and further relief as the Court deems just and proper.

DATED: November 20, 2011

Respectfully submitted,

HENRY M. LEE LAW CORPORATION

By: /s/ Robert Myong
Henry M. Lee
Robert Myong
Attorneys for Plaintiff

EXHIBIT A

PROMISSORY NOTE

\$1,000,000

November 1, 2002

For value received, Keith J. Kim (the "Debtor") promises to pay to Michael Chung (the "Holder"), the principal sum of One Million Dollars (\$1,000,000). This Note is subject to the following terms and conditions.

1. Maturity. This Note will automatically mature and be due and payable on December 31, 2007 (the "Maturity Date").

2. Payment. Except as set forth herein, all payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the. This Note may be prepaid without the prior consent of the Holder.

3. Transfer; Successors and Assigns. The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Debtor. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Holder. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee.

4. Governing Law. This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

5. Notices. Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

6. Amendments and Waivers. Any term of this Note may be amended only with the written consent of the Debtor. Any amendment or waiver effected in accordance with this Section 8 shall be binding upon the Debtor, the Holder and each transferee of the Note.

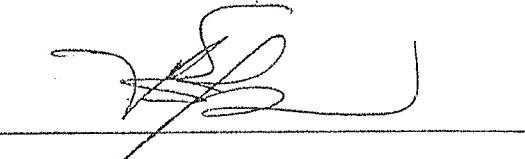
[Signature Page Follows]

(HC)

IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed and delivered as of the date first above written.

DEBTOR:

Keith J. Kim



AGREED TO AND ACCEPTED:

MICHAEL CHUNG



SIGNATURE PAGE TO PROMISSORY NOTE

EXHIBIT B

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 04 2003

1 Henry M. Lee, Bar No. 156041
2 Douglas Han, Bar No. 232858
2 HENRY M. LEE LAW CORPORATION
3 3530 Wilshire Blvd., Suite 1710
3 Los Angeles, CA 90010
4 (213) 382-0955
4
5 Attorneys for Plaintiff
5 MICHAEL CHUNG
6
7

John A. Clarke, Executive Officer/Clerk
M. G.
BY MARY GARCIA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10 MICHAEL CHUNG an individual,) CASE NO.: BC 392047
11 Plaintiff,)
12 vs.) COMPLAINT FOR DAMAGES
13) FOR:
14 KEITH KIM an individual; DOUGLAS) BREACH OF CONTRACT;
15 PARK, an individual; STEVEN) INTENTIONAL
16 BOOKSPAN, an individual;) MISREPRESENTATION;
17 BRAINRUSH, INC., a suspended) FAILURE TO DISCLOSE
18 corporation; BRAINRUSH) MATERIAL FACTS/BREACH OF
19 VENTURES, LLC, a California limited) FIDUCIARY DUTY;
liability company; BRAINRUSH) SECURITIES VIOLATIONS;
VENTURES MANAGEMENT, LLC, a) CONVERSION;
California limited liability company;) FRAUDULENT TRANSFERS
DOES 1 through 100, inclusive)
Defendants.)

GENERAL ALLEGATIONS

Plaintiff MICHAEL CHUNG hereby alleges, avers and complains as follows:

1. Plaintiff MICHAEL CHUNG ("Plaintiff") is an individual residing in the County of Los Angeles, State of California.
2. Plaintiff is informed and believes that Defendant DOUGLAS PARK is an individual residing in the County of Los Angeles, State of California. Defendants KEITH KIM and STEVEN BOOKSPAN ("CFO") are individuals residing in the County of Oakland, State of

1 California. Plaintiff is informed and believes that Defendants BRAINRUSH VENTURES, LLC
2 ("BV") and BRAINRUSH VENTURES MANAGEMENT, LLC ("BVM") are limited liability
3 companies duly formed under the laws of the State of California and at the time of the
4 transactions set forth herein, maintained their principal places of business with offices within the
5 County of Los Angeles, State of California. Plaintiff alleges that all representations, transactions,
6 and performance of the agreements set forth herein were to be performed in the County of Los
7 Angeles, State of California and therefore proper venue lies with the Superior Court of the State
8 of California, County of Los Angeles. Plaintiff is informed and believes and alleges that
9 BRAINRUSH, INC. (also referred to herein as "BRAINRUSH") is a corporate entity, which may
10 no longer exist and/or is suspended, but which at the time of the transactions alleged herein, is
11 believed to have been a corporate entity which maintained its principal place of business within
12 the County of Los Angeles, State of California.

13 3. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of cross defendants designated as DOES 1 through 100, inclusive, are unknown to
15 Plaintiff, who therefore sues said defendants by such fictitious names. Each of the DOE
16 defendants is negligently or otherwise legally responsible in some manner for the events and
17 happenings which proximately caused damages to Plaintiff, as herein alleged. Plaintiff will ask
18 leave of court to amend this Complaint to allege their true names and capacities when the same
19 have been ascertained.

20 4. At all times mentioned herein, Defendants, and each of them, were the agents,
21 representatives, employees, successors and/or assigns, each of the other, and were acting within
22 the course and scope of their authority as such agents, representatives, employees, successors
23 and/or assigns, and each Defendant ratified and approved the acts of its, his or her agent, and/or
24 that of the remaining Cross Defendants, and each of them.

25 5. Plaintiff is informed and believes and thereon alleges that Defendant KEITH KIM
26 and DOES 1-50 and each of them, on the one hand, are and at all times herein mentioned were,
27 the alter egos of BRAINRUSH, INC. and DOES 51-100, and each of them, on the other hand,
28 and there exists, and at all times herein mentioned has existed, a unity of interest and ownership

1 between Defendants, and each of them, such that any separateness between them has ceased to
2 exist, in that said Defendant, and each of them, completely controlled, dominated, managed, and
3 operated BRAINRUSH, INC. and DOES 51-100 and also used assets of same for their personal
4 uses, caused assets of the corporations to be transferred to them without adequate consideration,
5 and withdrew funds from the corporations' bank accounts for their personal uses, and failed to
6 maintain the separateness and separate existence of the corporate entity.

7 6. Plaintiff is further informed and believes and thereon alleges that BRAINRUSH,
8 INC. is and at all times herein mentioned was, a mere shell, instrumentality, and conduit through
9 which Defendant KEITH KIM, and each of them, on the other hand, carried on their business in
10 the corporate names exercising complete control and dominance of such business to such an
11 extent that any individuality or separateness does not and at all times herein mentioned did not
12 exist. In doing the acts as herein alleged, the Defendants, and each of them, ratified, accepted
13 and approved of the acts, omissions and representations of the other Defendants personally
14 benefitting therefrom.

15 7. Plaintiff and Defendant's have known each other since high school. Said parties
16 were class mates and established a friendship. The parties maintained their friendship over the
17 years, and from time to time, communicated with each other as friends. In or about 1998,
18 Plaintiff resided in Los Angeles County and Defendant resided and conducted business in
19 Northern California, in the Bay area. Plaintiff was traveling to Berkeley for his own business
20 purposes. Plaintiff and Defendant, still friends at the time, met to have a casual meeting. During
21 this meeting, Defendant Keith Kim advised Plaintiff that Defendant had experienced success
22 with his business venture known as Granny Goose and was engaged in various internet ventures,
23 including a venture entitled "mysimon." Plaintiff and Defendant further discussed their business
24 affairs at the time, and ended their initial casual meeting.

25 8. Several months later, approximately into the year 1999, Defendant contacted
26 Plaintiff while Plaintiff was in Los Angeles County. Defendant specifically represented to
27 Plaintiff that Defendant's internet project was now entitled BRAINRUSH. Defendant explained
28 that BRAINRUSH invested in several other companies to assist and incubate those companies

1 for operation and profit, sale of the company, and/or public offering. Defendant inquired whether
2 Plaintiff would be interested in investing in the project and invited Plaintiff to Northern
3 California to visit the business offices, meet with management members, and to obtain additional
4 information. Plaintiff, based on the friendship, representations about Defendant's business
5 success, decided he would further review the opportunity and did travel to the business offices
6 located in Northern California. While on his visit, Defendant introduced Plaintiff to various
7 members of management, and provided Plaintiff with an executive summary for BRAINRUSH.
8 The executive summary, Defendant, and other management members confirmed that Defendant
9 KEITH KIM was the CEO, director, and majority shareholder of BRAINRUSH.

10 9. Several days after his return to Los Angeles County, Defendant called Plaintiff
11 again soliciting him to invest in BRAINRUSH. Plaintiff decided that since Defendant was a long
12 time friend, represented success with the Granny Goose venture, and his visit to the business
13 offices, Plaintiff would invest and advised Defendant he would proceed. Defendant thereupon
14 sent Plaintiff a form to provide information about Plaintiff's personal financial condition, which
15 Plaintiff filled out and returned.

16 10. Defendant thereafter gave Plaintiff instructions to wire transfer his investment to
17 Defendant's company. In or about late 1999, Plaintiff agreed to invest the sum of \$1.0 million,
18 and did wire transfer the total sum to Defendant's company. Plaintiff is informed and believes
19 that as a result of Plaintiff's investment, Plaintiff thereupon became a shareholder and investor of
20 Defendant's company. Defendant represented, and Plaintiff is informed and believes, that
21 Defendant was an officer, director, and majority shareholder of BRAINRUSH. As a shareholder
22 and investor of BRAINRUSH, Plaintiff alleges Defendant, an officer, director and majority
23 shareholder, owed a fiduciary duty of the highest degree to Plaintiff, a minority shareholder.
24 Plaintiff alleges that Defendant was required to disclose to Plaintiff, the details of all transactions
25 affecting Plaintiff's investment, including but not limited to an accounting of the receipt,
26 distribution, use of all monies involved with the project.

27 11. In or about mid 2000, Plaintiff read a news article which stated that one of the
28 BRAINRUSH companies had been sold for a significant sum, with BRAINRUSH to receive an

1 estimated \$70 million. Plaintiff was surprised and very excited to learn the news, and contacted
2 Defendant to learn about the details of the transaction. When Plaintiff contacted Defendant, he
3 confirmed the transaction and further confirmed the proceeds of the sale were in fact estimated at
4 \$70 million.

5 12. When Plaintiff inquired as to when any profits from the sale would be distributed,
6 Defendant stated that all investors would have to wait a few months for the company to prepare
7 financial statements and records to document the transaction and revenues. Several months later,
8 and into the year 2001, Plaintiff made several requests for the status of the financial records.
9 Defendant's response was the accounting had not yet been completed and to wait. Because
10 Plaintiff and Defendant had been friends for so long, Plaintiff had no reason to believe
11 Defendant's representations were false, and waited. After waiting several week without
12 responses, Plaintiff continued to ask from time to time and received the same response as an
13 excuse for the delays.

14 13. Finally, in or about mid 2001, after repeated insistence as to what happened to the
15 money, Defendant stated there were no profits from the \$70 million transaction. Instead, the
16 company had suffered significant losses and the funds were used to offset those losses, so there
17 was nothing from the transaction left to distribute as profits to the investors. Plaintiff was
18 surprised to learn about such losses, especially since Defendant had not provided Plaintiff with
19 any financial information relative to the BRAINRUSH overall financial condition. Again,
20 Plaintiff had no reason at this point to believe the Defendant's representations were false because
21 Defendant was Plaintiff's friend and also because BRAINRUSH did have other companies which
22 it was incubating and/or had invested in. Plaintiff thereupon requested to review the financial
23 records which reflected such enormous losses, and distribution of the \$70 million. Defendant
24 responded that the company's CFO had lost the financial records; therefore, Defendant could not
25 provide Plaintiff with the requested financial accounting. Over the course of several months,
26 Plaintiff repeatedly asked for the documents; however, Defendant responded with the same
27 excuses for his continued delays, that the accounting had not been completed because the CFO
28 had lost the financial records. Defendant did provide piecemeal documents, which documents

1 were simply a few pages of bank information, and prepared financial statement that had no
2 supporting documents.

3 14. After repeated failed attempts at obtaining the financial information, in or about
4 late 2001, Plaintiff heard rumors that Defendant KEITH KIM and Defendant DOUGLAS PARK
5 had personally taken significant portions, if not all, of the entire \$70 million. Plaintiff confronted
6 DOUGLAS PARK about the missing money, and was advised that KEITH KIM had personally
7 taken money from the company because KEITH KIM personally owed money to DOUGLAS
8 PARK. DOUGLAS PARK stated that KEITH KIM had used proceeds from the \$70 million to
9 pay the personal loan to DOUGLAS PARK back. Plaintiff alleges that DOUGLAS PARK was
10 also an officer, director and majority shareholder of the BRAINRUSH company, and therefore,
11 said Defendant owed fiduciary duties to Plaintiff as well.

12 15. Plaintiff thereupon confronted KEITH KIM and again demanded an accounting of
13 all of the \$70 million. Plaintiff also advised KEITH KIM that he intended to sue Defendant if he
14 continued to withhold documents from him. Defendant responded that he had been arrested by
15 the FBI, was currently being investigated by the SEC for insider trading securities law violations,
16 and begged Plaintiff not to sue him. Defendant also represented that if Plaintiff could just wait a
17 few months, Defendant would pay Plaintiff his full investment back.

18 16. After waiting several months, and not receiving return of his investment, Plaintiff
19 again advised Defendant that he intended to sue Defendant to obtain the records. Defendant
20 again pleaded with Plaintiff not to sue stating that the SEC investigation had not been completed,
21 and that Defendant was using all of his financial resources to pay for lawyer fees in response to
22 the SEC investigation. Defendant also repeated that it was not his fault that the financial records
23 were not available because the CFO had lost all of the records. Defendant also denied that he
24 had personally used or taken any money for his personal use, and further denied DOUGLAS
25 PARK's allegations that Defendant withdrew money to pay DOUGLAS PARK a personal loan.
26 Defendant asked Plaintiff, as a friend, to believe what he was saying and not to sue. Defendant
27 also offered that if Plaintiff agreed not to sue Defendant at that time, Defendant would give
28 Plaintiff a promissory note, personally agreeing to repay Plaintiff his entire investment in full

1 within five years.

2 17. Because of their friendship and in reliance on Defendant's representations that he
3 was in the midst of an investigation as to other unrelated securities matters, that Defendant had
4 not used or taken any of the transaction proceeds for his personal use, Plaintiff agreed not to sue
5 Defendant at that time, accepted the written promissory note. On or about November 1, 2002,
6 Plaintiff and Defendant executed a written promissory note, the basic terms of which were that
7 KEITH KIM would personally repay Plaintiff the sum of \$1.0 million, payment of which was
8 due in five years, on December 31, 2007. A true and correct copy of the written agreement
9 between Plaintiff and Defendant is attached hereto and incorporated by reference.

10 18. In or about 2003, Defendant contacted Plaintiff and inquired how Plaintiff's
11 business was going. Plaintiff had long before discussed with Defendant that Plaintiff was in the
12 business of real estate financing. Defendant inquired whether Plaintiff would permit Defendant
13 to invest in Plaintiff's business. Plaintiff responded that Defendant could invest. Defendant
14 ultimately invested the sum of \$750,000. After making the investment, in or about mid 2005,
15 Defendant called Plaintiff and demanded return of his investment. Plaintiff responded that
16 Plaintiff could not immediately return the full investment amount. After further discussions,
17 Plaintiff and Defendant agreed that Plaintiff would return the sum of \$500,000 to Defendant, and
18 the remaining balance of \$250,000 would reduce Defendant's promissory note obligation by
19 \$250,000, to a new balance owing of \$750,000. Plaintiff did in fact return \$500,000, and the
20 balance owing on Plaintiff's note was reduced to \$750,000.

21 19. In or about early December of 2007, Plaintiff contacted Defendant and reminded
22 him that the balance of \$750,000 due on the promissory note was due and payable on December
23 31, 2007. Defendant responded that since its been such a long time, that Plaintiff should just
24 forget the debt. Defendant stated that since they were friends, he wanted to simply forget about
25 the past and asked Plaintiff to just let things go. Plaintiff insisted that he was not going to simply
26 release the debt obligation and that he expected Defendant to pay on time, and that Defendant
27 should start go gather the money if he did not have it ready already.

28 20. Several days thereafter, Plaintiff again called Defendant to check on the status of

1 payment. Defendant then told a story that he was now being sued by the Internal Revenue
2 Service ("IRS") for failing to pay taxes, so he again asked Plaintiff to wait and not to take any
3 action until the IRS matter was over.

4 **FIRST CAUSE OF ACTION**

5 **[Breach of Contract Against Defendant KEITH KIM, and DOES 1-100]**

6 21. Plaintiff incorporates by this reference paragraphs 1 through 20 above as though
7 set forth in full herein.

8 22. As reflected in the written agreement herein, Plaintiff and Defendant entered into
9 a written agreement wherein Defendant agreed to pay Plaintiff the sum of \$1.0 million on or
10 before December 31, 2007. This agreement was reached in consideration for Plaintiff's
11 agreement to delay filing of his legal claims against Defendant. Plaintiff performed all terms and
12 conditions imposed upon him, including delaying filing of a lawsuit, delaying receipt of an
13 accounting of the financial records of BRAINRUSH, and permitting Defendant the full payment
14 period before demanding payment. Plaintiff and Defendant also entered into an agreement to
15 reduce the debt obligation to \$750,000. Plaintiff honored that agreement and performed it as
16 well. Defendant on the other hand breached the agreement by refusing to pay the agreed upon
17 amount on the date due.

18 23. As a direct and proximate result of the Defendant's breach, Plaintiff has suffered
19 damages of no less than \$750,000, loss of interest thereon, loss of profits from his original
20 investment, and delay of his lawsuit against the Defendant and BRAINRUSH, as well as
21 additional sums to be proven at the time of trial.

22 **SECOND CAUSE OF ACTION**

23 **[Fraud/Intentional Misrepresentation Against All Defendants, except BV and BVM]**

24 24. Plaintiff incorporates by this reference paragraphs 1 through 23 above as though
25 set forth in full herein.

26 25. Plaintiff alleges that Defendant KEITH KIM made the following material
27 representations to Defendant:

28 a. When Plaintiff inquired as to when any profits from the \$70 million sale

1 would be distributed, Defendant stated that all investors would have to wait a few
2 months for the company to prepare financial statements and records to document
3 the transaction and revenues.

4 b. Several months later, and into the year 2001, Plaintiff made several
5 requests for the status of the financial records. Defendant's response was the
6 accounting had not yet been completed and to wait. Because Plaintiff and
7 Defendant had been friends for so long, Plaintiff had no reason to believe
8 Defendant's representations were false, and waited.

9 c. In or about mid 2001, Defendant stated there were no profits from the \$70
10 million transaction. Instead, Defendant represented the company had suffered
11 significant losses and the funds were used to offset those losses, so there was
12 nothing from the transaction left to distribute as profits to the investors.

13 d. Defendant also stated that the company's CFO had lost the financial
14 records; therefore, Defendant could not provide Plaintiff with the requested
15 financial accounting. Over the course of several months, Plaintiff repeatedly
16 asked for the company financial documents; however, Defendant responded with
17 the same excuses for his continued delays, that the accounting had not been
18 completed because the CFO had lost the financial records. Defendant did provide
19 piecemeal documents, which documents were simply a few pages of bank
20 information, and prepared financial statement that had no supporting documents.

21 e. Defendant represented to Plaintiff to induce Plaintiff not to sue because
22 the SEC was investigating Defendant that Defendant was using all of his financial
23 resources to pay for lawyer fees in response to the SEC investigation. Defendant
24 also repeated that it was not his fault that the financial records were not available
25 because the CFO had lost all of the records. Defendant also denied that he had
26 personally used or taken any money for his personal use, and further denied
27 DOUGLAS PARK's allegations that Defendant withdrew money to pay
28 DOUGLAS PARK a personal loan. Defendant asked Plaintiff, as a friend, to

1 believe what he was saying and not to sue. Defendant also offered that if Plaintiff
2 agreed not to sue Defendant at that time, Defendant would give Plaintiff a
3 promissory note, personally agreeing to repay Plaintiff his entire investment in full
4 within five years.

5 26. Plaintiff alleges that Defendant's statements were in fact false. At the time,
6 Plaintiff did not have reason to suspect Defendant's representations were false at the time
7 because all information regarding the company's finances were controlled, retained and remained
8 in Defendant's possession at the time. Defendant was also Plaintiff's long time friend and
9 Plaintiff had no reason to believe Defendant would be lying. However, after relying on
10 Defendant's false representations and delaying filing a lawsuit, when Plaintiff demanded
11 payment of his money pursuant to the promissory note, Plaintiff then first had reason to believe
12 that he was a victim of fraud and that Defendant's plan from the outset was to defraud Plaintiff of
13 his money, and further plan to defraud him to delay filing a civil lawsuit against Defendant.

14 27. Because of Plaintiff's friendship and because all of the financial information was
15 within Defendant's possession, Plaintiff relied on Defendant's representations and delayed filing
16 a lawsuit, and also executed the promissory note. As a direct and proximate result of Plaintiff's
17 reliance on Defendant's misrepresentations, Plaintiff suffered damages including but not limited
18 to loss of his initial investment of \$1.0 million, which was later reduced to \$750,000, lost
19 interest, and lost profits from the \$70 million transaction,

20 28. Defendants, and each of them, in committing the acts complained of herein, acted
21 with the intent to defraud, with malice and with the intent to oppress the Plaintiff. Plaintiff is
22 therefore entitled to the recovery of punitive and exemplary damages against each of the
23 Defendants.

24 **THIRD CAUSE OF ACTION**

25 [Fraud/Failure to Disclose Material Facts/Breach of Fiduciary Duty Against All
26 Defendants, except BV and BVM]

27 29. Plaintiff incorporates by this reference paragraphs 1 through 28 above as though set
28 forth in full herein.

1 30. Plaintiff alleges that he was an investor /shareholder in the company known as
2 BRAINRUSH, INC. Plaintiff alleges that Defendants and each of them were each directors,
3 officers, and/or majority shareholders in said company. Therefore, as a result of said
4 relationship, Plaintiff alleges that Defendants and each of them owed Plaintiff a fiduciary duty to
5 disclose all material facts relating to Plaintiff's investment and further duty to avoid acting in a
6 manner which would personally benefit themselves or their related entities at Plaintiff's expense..

7 31. Among other things, Plaintiff alleges that Defendants had a duty to disclose and
8 failed to disclose the following material facts: Defendants failed to disclose that one of the
9 BRAINRUSH assets was going to be sold, failed to disclose the terms of the sale, failed to
10 disclose the monies received from sale, failed to disclose the accounting for the sales proceeds,
11 failed to disclose financial information as to the sale transaction and as to the entire company,
12 failed to disclose that Defendants and each of them, had personally taken all or a portion of the
13 sales proceeds and/or proceeds from Plaintiff's investments, failed to disclose that an officer was
14 being investigated for securities fraud, failed to disclose that an officer was being sued/pursued
15 for engaging in fraudulent transactions involving the sale of an unrelated business entity, failed to
16 disclose their true intent not to return Plaintiff's investment, failed to disclose their true intent to
17 delay Plaintiff from filing his lawsuit in order to hide, destroy, alter, destroy evidence of
18 Defendants' fraudulent conduct as Plaintiff was waiting for payment on his note.

19 32. Plaintiff reasonably and justifiably relied upon the representations and failure to
20 disclose material facts to his detriment. Plaintiff did not have reason to know, and did not know,
21 that the representations were in any way false, until December of 2007 when Plaintiff demanded
22 timely payment of his money, and Defendant suggested to Plaintiff that since it was so long ago,
23 that Plaintiff should just forget about the money. Had Plaintiff known of Defendant's securities
24 violations at the time of his investment, he never would have invested. Had Plaintiff known that
25 Defendant intended to delay Plaintiff with the promissory and had no true intent to repay
26 Plaintiff, Plaintiff never would have delayed filing of a civil lawsuit and would not have executed
27 a promissory note.

28 33. As a direct and proximate result of his reasonable and justifiable reliance upon the

1 representations and/or failure to disclose material facts of Defendants and each of them, Plaintiff
2 has suffered damages. Plaintiffs damages include but is not limited to delaying filing of a civil
3 action to collect his damages at an earlier date, loss of his initial \$1.0 million, less the agreed
4 upon reduction to \$250,000, lost profits from the \$70 million transaction, lost interest thereon as
5 well as all additional damages in a sum to be proven at the time of trial. Defendants, and each of
6 them, in committing the acts complained of herein, acted with the intent to defraud, with malice
7 and with the intent to oppress the Plaintiffs. Plaintiffs are therefore entitled to the recovery of
8 punitive and exemplary damages against each of the Defendants.

FOURTH CAUSE OF ACTION

[Fraud/False Promise Against KEITH KIM and All DOE Defendants]

11 34. Plaintiff incorporates by this reference paragraphs 1 through 33 above as though set
12 forth in full herein.

13 35. Plaintiff alleges that in making the false representations of facts set forth above, in
14 particular the representations made to induce Plaintiff to delay filing a civil lawsuit by way of the
15 promissory note, Defendants and each of them issued and made false promises, promises which
16 Defendants had no intent of performing at the time they were made. In specific, Plaintiff alleges
17 Defendant made false promises of intent to repay Plaintiff within 5 years, but in truth, had no
18 intent to repay Plaintiff, and instead, was only signing a promissory note to delay Plaintiff from
19 filing a civil lawsuit, to destroy evidence during the delay, and to prejudice Plaintiff in his rights
20 to later prosecute a cause of action against Defendant.

21 36. As a direct and proximate result of his reasonable and justifiable reliance upon the
22 representations and/or failure to disclose material facts of Defendants and each of them, Plaintiff
23 has suffered damages. Plaintiffs damages include but is not limited to delaying filing of a civil
24 action to collect his damages at an earlier date, loss of his initial \$1.0 million, less the agreed
25 upon reduction to \$250,000, lost profits from the \$70 million transaction, lost interest thereon as
26 well as all additional damages in a sum to be proven at the time of trial. Defendants, and each of
27 them, in committing the acts complained of herein, acted with the intent to defraud, with malice
28 and with the intent to oppress the Plaintiffs. Plaintiffs are therefore entitled to the recovery of

1 punitive and exemplary damages against each of the Defendants.

2 **FIFTH CAUSE OF ACTION**

3 **[Securities Violations Against all Defendants]**

4 37. Plaintiffs incorporate by this reference paragraphs 1 through 36 above as though
5 set forth in full herein.

6 38. Plaintiffs are informed and believe and based thereon allege that Defendants
7 KEITH KIM and DOUGLAS PARK, and each of the other Defendants were, at the time of the
8 acts alleged herein, persons who, directly or indirectly, controlled BRAINRUSH in that they
9 controlled or owned the largest single block of stock of such company, consisting of at least 25%
10 percent of the common stock, were each a principal member of the management of the corporate
11 entity in that they were officers, directors, or a person occupying a similar status to, or
12 performing similar functions of President, Chief Executive Officer, Chief Financial Officer or
13 Director of that organization. Plaintiff also alleges that all Defendants aided, abetted, and
14 conspired with each other to commit the unlawful acts complained of herein.

15 39. Plaintiffs are informed and believe and based thereon allege that Defendants
16 KEITH KIM, DOUGLAS PARK, and STEVEN BOOKSPAN had access to material information
17 relative to BRAINRUSH which information would have materially affected Plaintiffs' decision
18 to purchase and to retain the securities at issue.

19 40. In or about late 1999, Defendant solicited Plaintiff within the State of California
20 and while Plaintiff was in Los Angeles County to purchase shares, stock in BRAINRUSH.
21 Plaintiff alleges Defendants also omitted to state material facts necessary in order to make the
22 statements made in the communications, in light of the circumstances under which they were
23 made, not misleading. Among other things, Defendants and each of them failed to disclose that
24 they had personal transactions between them, including but not limited to a loan, which
25 transactions would be repaid from the revenues, profits and investments of BRAINRUSH.
26 Defendants also failed to disclose their intent to sell BRAINRUSH assets and thereafter to hide
27 the transactions from investors, and to further hide and withhold for their personal use, the
28 revenues from BRAINRUSH transactions. Had Plaintiff known and had it been disclosed to him

1 that Defendants and each of them had personal obligations between them that would be satisfied
2 from BRAINRUSH assets, income, revenues, profits, Plaintiff never would have invested.

3 41. Plaintiff also alleges on that Defendants and each of them failed to qualify and
4 register the BRAINRUSH stock within the State of California for legal sale and distribution. As
5 a result of their failure to qualify the sale of the securities and any sale thereof should be deemed
6 null and void, and of no further force or effect.

7 42. As a result of his reliance on the material misrepresentation and omissions of
8 material fact, Plaintiff has suffered damages. Plaintiff is entitled to rescind the above-described
9 purchase of securities and to restitution of their entire monies, including interest thereon. Plaintiff
10 tenders and/or before entry of judgment will tender to Defendants all shares or other security of
11 BRAINRUSH the above-described securities as purchased from Defendants

12 43. Plaintiff further seeks full and complete restitution of all monies which were paid
13 to any or all of the Defendants as a direct result of the BRAINRUSH investment. Plaintiff seeks
14 restitution in an amount to be determined at the time of trial, which includes but is not limited to
15 the principal sum of \$1.0 million, less agreed upon \$250,000 offset, interest including
16 prejudgment interest, or any other transfers of any monies to Defendants or each of them.
17 Defendants, and each of them, in committing the acts complained of herein, acted with the intent
18 to defraud, with malice and with the intent to oppress the Plaintiffs. Plaintiffs are therefore
19 entitled to the recovery of punitive and exemplary damages against each of the Defendants.

SIXTH CAUSE OF ACTION

[FRAUDULENT TRANSFERS Against All Defendants]

22 44. Plaintiff incorporates by this reference paragraphs 1 through 43 above as though set
23 forth in full herein.

24 45. Plaintiff alleges that as a result of all of the facts and transactions alleged herein,
25 that Plaintiff was a creditor who had a right to receive payment from each and every Defendant.
26 Plaintiff further alleges that all Defendants, excluding BV and BVM at the time of the
27 transactions, were debtors, all of whom who are liable on one or more of Plaintiff's claims for
28 payment. Plaintiff alleges that Defendants KEITH KIM, DOUGLAS PARK, STEVEN

1 BOOKSPAN, and BRAINRUSH on the one hand were debtors who engaged in numerous acts
2 constituting fraudulent transfers. Among other conduct, Plaintiff alleges that each of said
3 Defendants incurred obligations and/or transferred some or all of their assets, including but not
4 limited to investments, capital, equipment, stock, personal property, intellectual property,
5 licenses, technologies, equity, and other things of value to Defendants BV and BVM, as well as
6 other DOE Defendants, and that such transfers were made:

- 7 a. With actual intent to hinder, delay or defraud Plaintiff creditor;

8 b. Without receiving reasonably equivalent value in exchange for the transfer or

9 obligation and were engaged or about to engage in a business or transaction for

10 which the remaining assets of each Defendant debtor were unreasonably small in

11 relation to the business or transaction and/or intended to incur, or believed or

12 reasonably should have believed that he would incur, debts beyond his or her

13 ability to pay as they became due.

14 46. Plaintiff alleges on information and belief that Defendants and each of them
15 engaged in said fraudulent transfers with the actual intent to hinder, delay or defraud Plaintiff
16 because:

- 17 a. The transfers were to insiders, or to entities owned and controlled by insiders;

18 b. Each Defendant debtor retained possession or control of the property after the

19 transfer;

20 c. The transfers were concealed from Plaintiff;

21 d. Just before the transfers were made, Defendants and each of them were threatened

22 to be sued;

23 e. The transfer was of substantially all of each Defendant's assets;

24 f. All or some of Defendant debtors have absconded;

25 g. Defendants debtors have removed and concealed assets.

26 h. The value of the consideration received by the Defendant debtors was not

27 reasonably equivalent to the value of the assets transferred;

28 i. The Defendant debtors were insolvent or became insolvent shortly after the

1 transfers were made;

2 j. The transfers occurred before or shortly after a substantial debt was incurred,
3 among other things, the promissory note to Plaintiff;

4 47. Plaintiff alleges that all of the alleged fraudulent transfers and/or obligations
5 occurred within four years of the filing of this lawsuit and/or occurred within one year after the
6 transfers were or reasonably could have been discovered by Plaintiff.

7 48. As a direct and proximate result of the fraudulent transfers alleged herein,
8 Plaintiff has suffered damages, and seeks relief against defendants and each of them including
9 but not limited to; avoidance of the transfer to the extent necessary to satisfy Plaintiff's claim;
10 attachment or other provisional remedy against the assets transferred or its proceeds; an
11 injunction against further disposition by the Defendant debtors; appointment of a receiver to take
12 charge of the asset transferred or its proceeds; and all other relief as the court may deem the
13 circumstances require.

14
15 WHEREFORE, Plaintiff MICHAEL CHUNG prays for judgment in his favor and against
16 Defendants and each of them as follows:

17 **On the First Cause of Action:**

18 1. For damages of no less than \$750,000, plus interest thereon.

19 **On the Second, Third, Fourth and Fifth Causes of Action:**

20 1. Compensatory damages of no less than \$750,000, plus interest thereon;
21 2. For rescission of all investment agreements and promissory note attached hereto,
22 and restitution of all sums paid by Plaintiff;
23 3. For punitive and exemplary damages;

24 **On the Sixth Cause of Action:**

25 1. For avoidance of the transfer to the extent necessary to satisfy Plaintiff's claim;
26 attachment or other provisional remedy against the assets transferred or its
27 proceeds; an injunction against further disposition by the Defendant debtors;
28 appointment of a receiver to take charge of the asset transferred or its proceeds;

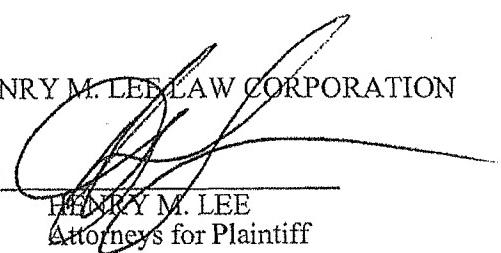
1 and all other relief as the court may deem the circumstances require.

2 **On all causes of action:**

- 3 1. That judgment be entered in favor of Plaintiff and against Defendants;
- 4 2. That Plaintiff recover the costs of suit incurred herein;
- 5 3. That Plaintiffs recover the sum of their reasonable attorneys fees pursuant to
- 6 contract and/or statute;
- 7 4. That the Court order such other and further relief as it may deem just and proper.

8
9 DATED: May 29, 2008

HENRY M. LEE LAW CORPORATION

10 By: 

11 HENRY M. LEE
12 Attorneys for Plaintiff

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROMISSORY NOTE

\$1,000,000

November 1, 2002

For value received, Keith J. Kim (the "Debtor") promises to pay to Michael Chung (the "Holder"), the principal sum of One Million Dollars (\$1,000,000). This Note is subject to the following terms and conditions.

1. **Maturity.** This Note will automatically mature and be due and payable on December 31, 2007 (the "Maturity Date").

2. **Payment.** Except as set forth herein, all payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the. This Note may be prepaid without the prior consent of the Holder.

3. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Debtor. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Holder. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee.

4. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

5. **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

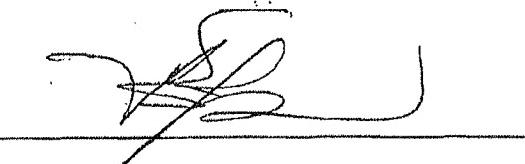
6. **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Debtor. Any amendment or waiver effected in accordance with this Section 8 shall be binding upon the Debtor, the Holder and each transferee of the Note.

[Signature Page Follows]

IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed and delivered as of the date first above written.

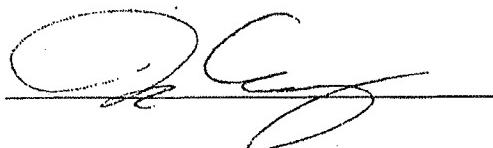
DEBTOR:

Keith J. Kim



AGREED TO AND ACCEPTED:

MICHAEL CHUNG



SIGNATURE PAGE TO PROMISSORY NOTE

EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Henry M. Lee, Bar No. 156041; Peter Choi, Bar No. 249482
HENRY M. LEE LAW CORPORATION
 3530 Wilshire Boulevard, Suite 1710
 Los Angeles, CA 90010
 TELEPHONE NO.: (213)382-0955 FAX NO. (Optional): (213)382-0956
 E-MAIL ADDRESS (Optional):
 ATTORNEY FOR (Name): Plaintiff: Michael Chung

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
 STREET ADDRESS: 111 North Hill Street
 MAILING ADDRESS: 111 North Hill Street
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: Central District

PLAINTIFF/PETITIONER: Michael Chung
 DEFENDANT/RESPONDENT: Keith Kim, et al.

REQUEST FOR Entry of Default Clerk's Judgment
 (Application) Court Judgment

CASE NUMBER:
 BC392047

1. TO THE CLERK: On the complaint or cross-complaint filed- first amended complaint filed
 - a. on (date): May 11, 2009
 - b. by (name): Plaintiff: Michael Chung
 - c. Enter default of defendant (names): KEITH KIM an individual
 - d. I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

- (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
- e. Enter clerk's judgment
 - (1) for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
 Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.
 - (2) under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)
 - (3) for default previously entered on (date):

2. Judgment to be entered.	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$	\$	\$
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse).....	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$

g. Daily damages were demanded in complaint at the rate of: \$ per day beginning (date):
 (* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

3. (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: December 29, 2010
 Peter Choi

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

John A. Clarke

A. Pergler

, Deputy

FOR COURT
USE ONLY

- (1) Default entered as requested on (date): DEC 30 2010
 (2) Default NOT entered as requested (state reason):

Clerk, by _____

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 CIV-100 [Rev. January 1, 2007]

REQUEST FOR ENTRY OF DEFAULT
 (Application to Enter Default)

Code of Civil Procedure,
 §§ 585-587, 1169
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

PLAINTIFF/PETITIONER: Michael Chung	CASE NUMBER:
DEFENDANT/RESPONDENT: Keith Kim, et al.	BC392047

4. Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant did did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):

- a. Assistant's name: _____
- b. Street address, city, and zip code: _____
- c. Telephone no.: _____
- d. County of registration: _____
- e. Registration no.: _____
- f. Expires on (date): _____

5. Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)). This action

- a. is is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
- b. is is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
- c. is is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

- a. not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names): _____
- b. mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
 - (1) Mailed on (date): See attached P.O.S.
 - (2) To (specify names and addresses shown on the envelopes):
Please see attached Proof of Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: December 29, 2010

Peter Choi

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$ _____
- b. Process server's fees \$ _____
- c. Other (specify): \$ _____
- d. \$ _____
- e. TOTAL \$ _____
- f. Costs and disbursements are waived.

9. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. Declaration of nonmilitary status (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 3530 Wilshire Blvd, Suite 1710, Los Angeles, CA 90010. On December 29, 2010, I mailed the foregoing document described as:

REQUEST FOR ENTRY OF DEFAULT

on the parties in this action by mail by placing a true copy thereof in a sealed envelope addressed as follows:

Keith Kim
6017 La Salle Ave.
Oakland, CA 94611

Douglas Park
11 Buckskin Rd.
Bell Canyon, CA 91307

Lottie Cohen, Esq.
Law Offices of Lottie Cohen
3637 Motor Avenue, Suite 360
Los Angeles, CA 90034

Brainrush, Inc.
11 Buckskin Rd.
Bell Canyon, CA 91307

1 Brainrush Ventures, LLC
2 11 Buckskin Rd.
Bell Canyon, CA 91307

Brainrush Ventures Management, LLC
11 Buckskin Rd.
Bell Canyon, CA 91307

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. The above envelope was sealed and placed for collection and mailing on the above date following our ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

7 Executed on December 29, 2010 at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

0 () (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Diana Kang
Name


Signature

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Henry M. Lee, Bar No. 156041; Robert Myong, Bar No. 262097 Henry M. Lee, Law Corporation 3530 Wilshire Blvd., Suite 1710, Los Angeles, CA 90010 TELEPHONE NO.: (213) 382-0955 FAX NO. (Optional): (213) 382-0956 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, Michael Chung		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District, Stanley Mosk Courthouse		ORIGINAL FILED
PLAINTIFF: Michael Chung		OCT 20 2011
DEFENDANT: Keith Kim, et al.		LOS ANGELES SUPERIOR COURT
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: BC392047

JUDGMENT1. **BY DEFAULT**

- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d. Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
- e. Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. **ON STIPULATION**

- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
- b. the signed written stipulation was filed in the case.
- c. the stipulation was stated in open court the stipulation was stated on the record.

3. **AFTER COURT TRIAL**. The jury was waived. The court considered the evidence.

- a. The case was tried on (*date and time*):
 before (*name of judicial officer*):
- b. Appearances by:

 Plaintiff (*name each*):

(1)

(2)

 Continued on Attachment 3b. Plaintiff's attorney (*name each*):

(1)

(2)

 Defendant (*name each*):

(1)

(2)

 Continued on Attachment 3b. Defendant's attorney (*name each*):

(1)

(2)

- c. Defendant did not appear at trial. Defendant was properly served with notice of trial.

- d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

Page 1 of 2

PLAINTIFF: Michael Chung	CASE NUMBER: BC392047
DEFENDANT: Keith Kim, et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

4. Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. for plaintiff (name each):

Michael Chung

and against defendant (names):

Douglas Park, an individual

Continued on Attachment 5a.

c. for cross-complainant (name each):

and against cross-defendant (name each):

Continued on Attachment 5c.

b. for defendant (name each):

d. for cross-defendant (name each):

6. Amount.

a. Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/>	Damages	\$ 750,000.00
(2) <input checked="" type="checkbox"/>	Prejudgment interest at the annual rate of %	\$ 283,151.44
(3) <input checked="" type="checkbox"/>	Attorney fees	\$ Per Motion
(4) <input checked="" type="checkbox"/>	Costs	\$ 455.00
(5) <input type="checkbox"/>	Other (specify):	\$
(6) TOTAL		\$ 1,033,606.40

(1) <input type="checkbox"/>	Damages	\$
(2) <input type="checkbox"/>	Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/>	Attorney fees	\$
(4) <input type="checkbox"/>	Costs	\$
(5) <input type="checkbox"/>	Other (specify):	\$
(6) TOTAL		\$

b. Plaintiff to receive nothing from defendant named in item 5b.

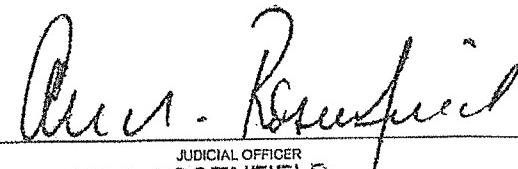
Defendant named in item 5b to recover costs \$ and attorney fees \$

d. Cross-complainant to receive nothing from cross-defendant named in item 5d.

Cross-defendant named in item 5d to recover costs \$ and attorney fees \$

7. Other (specify):

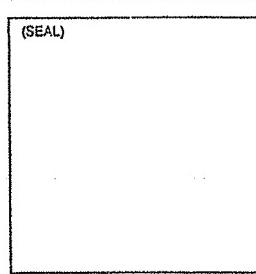
Date: OCT 20 2011



JUDICIAL OFFICER
ALAN S. ROSENFIELD

Date:

Clerk, by _____, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy



In re Keith J. Kim and Janice S. Kim; Michael Chung v. Keith Kim, et al.; Case No.: 11-bk-49539
leelawcorpdia
to:
John_Bolts
11/28/2011 03:00 PM
Cc:
leelawcorp, leelawcorprobert, Leelawcorplucie
[Show Details](#)

2 Attachments



Adversary Proceeding Cover Sheet.pdf Complaint to Determine Dischargeability of Debt.pdf

Dear Mr. Bolts:

Per our telephone conversation this afternoon, please file the Adversary Proceeding Cover Sheet and Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2) and (4) for the above referenced matter. Should you have any questions, please contact this office. Thank you.

Diana Kang
Secretary to Robert Myong
HENRY M. LEE LAW CORPORATION
3530 Wilshire Boulevard, Suite 1710
Los Angeles, CA 90010
Tel. (213) 382-0955
Fax (213) 382-0956

CONFIDENTIALITY NOTICE: The information contained in this e-mail is transmitted by an attorney and/or staff. It is privileged and confidential, and intended only for the use of the individual(s) named above. If you are not an intended recipient, you are hereby notified that any dissemination, distribution or copy of this information is strictly prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (213) 382-0955 or by return e-mail, and delete this e-mail and all attachments from your system. Thank you.